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JOHN T. FEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 519

TAYLOR FORGE & PIPE WORKS,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Taylor Forge & Pipe Works, petitioner, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Seventh Circuit, issued on June 6, 1956, denying petitioner's request to review and set aside an order issued by the Board against the petitioner.

THE DECISIONS BELOW.

The opinion of the Court below (Appendix, *infra*, pp. 23 to 31) is reported at 234 F. 2d 227 (C. A. 7, 1956). The findings of fact, conclusions of law, and order of the Board (R. 177-186)* are reported at 113 NLRB 693.

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*The reference "R." designates the Joint Appendix filed in the Court of Appeals, to which has been added the proceedings in that court.

JURISDICTION.

The decree of the Court below (Appendix *infra*, pp. 32 to 35) was entered on July 23, 1956. The jurisdiction of this court is invoked under 28 U. S. C. 1254, and under Section 10 (e) of the National Labor Relations Board, as amended, 63 Stat. 107, 29 U. S. C. 160 (e).

QUESTION PRESENTED.

The Forge and Machine Workers Industrial Union (hereinafter referred to as the "Union") is the statutory bargaining representative of the employees of Taylor Forge & Pipe Works, the petitioner (hereinafter referred to as the "Company").

A Company job analyst pursuant to an analytical procedure known as the National Metal Trades Association Job Rating Plan evaluated all hourly paid jobs (R. 111, 57-68, 23-52). Each job was given a numerical value which is the total of the point values assigned to the job when its work content was evaluated under eleven different factors.

The Company representative refused a blanket request of the Union's attorney for the point values assigned under each of eleven factors by the Company's job analyst (which can be considered the subconclusions of the analyst) and for this single reason was found guilty of bargaining in bad faith with the Union under Section 8 (a)(5) of the National Labor Relations Act.

The Union representatives had received from the Company the *total* point values assigned to each job by the job analyst (R. 101) (which can be considered the evaluation conclusions of the analyst) along with the descriptive wage rate and conversion tables (R. 23-52, 56) as well as substantial information about the analytical procedure used (R. 57-68).

The question presented in this case is:

Whether or not, as a matter of law, the Board and Court erred in finding that the Company was guilty of bargaining in bad faith *per se* under Section 8 (a)(5) of the National Labor Relations Act when it refused to furnish the Union with certain analytical subconclusions—*i.e.*, the point values, assigned by an analyst to each job under eleven evaluation factors, (the total of these points assigned each job by the analyst had been given the Union)—in the absence of any showing of "relevancy" or "need" for such information, especially in view of the fact that the Company did not predicate opposition to any particular collective bargaining demand upon the analytical subconclusions that its job analyst had reached.

STATUTE INVOLVED.

Section 8 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), provides in part:

Unfair Labor Practices.

"Sec. 8 (a) It shall be an unfair labor practice for an employee—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a)."

STATEMENT OF THE CASE.

A. The Facts.

By the time collective bargaining between the parties commenced, in April, 1954, the Union representatives had been supplied by the Management representatives with the following information which from time to time had been supplemented and brought up to date:

(1) A complete list of all employees, showing their wage rate and job classification (R. 15).

(2) The wage rate for each job (R. 23-52).

(3) The job description for each job (R. 97, 83).

(4) The National Metal Trades Association Job Rating Procedure Booklet describing the process of analyzing jobs and assigning point values to them (R. 57-68).

(5) The *total* points assigned each job by the Company analysts by following the National Metal Trades Job Rating Procedure (R. 101, 99-100).

(6) The conversion table used to convert the *total* points for each job into monetary amounts (R. 56).

Other information had been supplied by the Company concerning matters not directly relevant here (R. 15-18).

The information sought by the Union representatives, the refusal of which brings this case before this Court, consisted of the number of points assigned by the Company job analysts under each of eleven evaluation factors. These job analysts selected for each job what they considered to be the appropriate degree from among five degrees described in the National Metal Trades Association Job Rating Procedure Booklet for each of eleven factors (R. 111, 57-68). For example, the "education" required to properly perform a particular job, in the opinion of the analyst, was compared with the description of five different degrees of education set forth in the booklet under the "education" factor (R. 59-60). The most appropriate

degree in the judgment of the analyst was selected and the number of points for the selected degree was then assigned to the job. Under the "experience" factor the job analyst similarly selected the degree he felt best fitted the job and assigned the resulting number of points to the job. The appropriate degree under "initiative and ingenuity" was selected and the resulting number of points assigned to the job. This process was continued under factors involving the "physical" and the "mental and visual" demands required of the employee when he performs the job; the responsibility of the employee when performing the job for "equipment and process," "material or product," "safety of others," and "work of others." Finally, degree ratings reflecting the quality of the "working conditions" surrounding the job and the "unavoidable hazards," if any, involved in performing the job were selected and the appropriate points assigned to the job.

The total of all of the point values resulting from the selection of degree ratings under each of the eleven factors makes up the *total point rating* for the job. This total point rating or the composite conclusion of the job analyst for each job was made available to the Union representatives (R. 101).

In addition, the Company had not hesitated to supply to the Union the points which had been assigned to each job by the selection of the appropriate degree under each of the eleven job rating factors (the subconclusions) on *each occasion that the rate of a particular job had been challenged by the Union* as being inequitable (R. 9-13, 135, 150-152). Thus, the information requested, refused in this case because it was a "blanket" request and unrelated to a particular wage dispute was supplied to the Union when it became relevant to a *particular* dispute between the parties.

The situation surrounding the two separate "blanket" requests for the points assigned under each factor and the refusal to supply this information were as follows:

The Union attorney testified that sometime shortly prior to April, 1954, he had a telephone conversation with the Industrial Relations Director of the Company, and that during this conversation he had requested the point values assigned by the Company's job analyst to each job when he selected of one of five degree ratings *under each of the eleven factors* (R. 86-87). In refusing this request, the Industrial Relations Director is reported to have stated that the Union was free to follow the National Metal Trades Association Job Rating procedure itself. It had already been given all the necessary information, *i.e.*, the wage rates and job descriptions and the booklet describing the procedure (R. 87, 56-68). Furthermore, the *total* of the points assigned to each job by the Company job analyst under the eleven factors had been made available to the Union (R. 101).

On April 16, 1954, at a collective bargaining conference, the Union attorney again requested the point values under each of the eleven factors for each job (R. 87). He explained, as did the Industrial Relations Director for the Company, that the information was refused because the latter did not want to supply information which the Union would attempt to "pick apart" (R. 88, 110). In reply, the Industrial Relations Director said the Union could make its own evaluations by following the National Metal Trades Job Rating Procedures described in the booklet. Since the Union already had available to it the total point evaluation assigned to each job by the Company's job analyst (R. 110, 101), the Union could in this way check the conclusion of the Company analyst.

The Industrial Relations Director also explained that

whenever there had been a dispute over the equity of a particular wage rate and the material became relevant, the breakdown of the total point score to the points assigned under each of the eleven factors had been given to the Union (R. 9-13, 77, 110, 135). There is no evidence that there was a dispute concerning any particular wage rate pending at the time that the Union representative made his blanket request for the breakdown of the total points assigned each job.

When the Union attorney's "blanket" request was denied, he is reported to have said: "That is just what I want to hear you say. Now I am going to file an unfair labor practice charge * * * I waited eight months for this chance" (R. 111).

B. Board's Decision.

The National Labor Relations Board, in a divided opinion, held that the failure of the Company to comply with the Union's request for the points assigned under each of the eleven factors (even though the total points assigned to each job had been supplied) was evidence of a violation of the Company's obligation to bargain in good faith under Section 8 (a)(5) of the Act (R. 177-181).

The Board pointed out that the data asked for had been supplied when the Company and the Union had been in dispute over an individual wage rate, and, hence, the Board said it "is equally relevant and necessary when the object of the negotiations is to establish broad pay formulas which will eliminate the necessity of filing individual grievances."[1]

1. It should be noted that there is no evidence whatsoever in the record that the request for the information was related to any such collective bargaining objective and hence this comment concerning relevancy was mere speculation.

Board Chairman Guy Farmer and Member Phillip Rogers vigorously dissented (R. 181-186). They said:

> "We believe that the majority's conclusion in this case establishes a broadside principle for every issue even remotely resembling a wage information situation. The Supreme Court has rejected such an approach to cases involving charges of *per se* 8 (a) (5) violations. It was held that, 'The duty to bargain collectively is to be enforced by application of the good faith bargaining standards of Section 8 (d) to the facts of each case. * * *' The Respondent's over-all good faith in its dealings with the Union cannot be gainsaid." (R. 183.)

They said that an employer was not under an obligation to furnish a Union "with all the minutae leading to its subconclusions which, in turn, are the basis for the ultimate bargainable fact—the rate of pay for each individual job." (R. 184.) They pointed out that the majority was requiring as part of the obligation to bargain in good faith the delivery of analytical material and said:

> "Indeed, it is not even clear that the subject of the Union's demand is 'wage information'. The point designations which the Respondent assigns to the 11 individual job factors represent the Respondent's considered judgment based upon its introspective mental processes. In this instance, the Respondent reduced to writing the finer points of its thinking about the relative difficulty of the jobs in its plant, the comparative skill, experience, training, and other traits the jobs require. Another employer keeps these elements of his mental processes in the abstract and does not reduce them to writing. If the more methodical employer must expose the details of his inner thoughts at the bargaining table for others critically to appraise, logically, a less systematic one might be compelled to codify his thoughts in writing for the benefit of his em-

ployees' bargaining representative. A union's right to such information, if it is such a right and if information it is, can hardly depend upon the form in which an employer keeps it." (R. 185.)

After considering the court decisions cited by the majority (including *Whitin Machine Works,* 108 NLRB 1537, enf'd 217 F. 2d 593 (C. A. 4, 1954), cert. den., *Whitin Machine Works* v. *N. L. R. B.,* 349 U. S. 905, 75 S. Ct. 583 (1955) and *Item Company,* 108 NLRB 1634, enf'd 220 F. 2d 956 (C. A. 5, 1955), cert. den., *Item Co.* v. *N. L. R. B.,* 350 U. S. 836, 76 S. Ct. 73 (1955); re-hring. den., 350 U. S. 905, 76 S. Ct. 177 (1955)), they conclude that the subordinant detailed type of information involved in the instant case was far too remote from the type of information dealt with in those cases to make their holdings applicable in the instant case.

In their opinion the statute did not impose upon an employer the obligation to reveal, *upon blanket request, with no pretense of showing "need" or "relevancy"*, remote information or facts, such as were here involved. They concluded that in view of the extensive amount of information given to the Union, it was impossible to decide that the Company had violated its obligation to bargain collectively, "which is all that under the statute it was obligated to do." (R. 186.)

C. The Court of Appeals' Decision.

The Court of Appeals for the Seventh Circuit, in a divided opinion, denied the petitioner's request to set aside the Board order.

The Court pointed out that the law did not require an employer to make an analytical study for the Union, or for itself, for that matter, but when it did so the Court could see no reason why the Union should not be entitled to the

results of this study. The Court majority said in this connection:

> "* * * We see no reason why either party to the bargaining process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole." (Appendix, *infra*, p. 28.)

The Court explained away the lack of evidence concerning the Union's need for this information by saying that it might be impossible for the Union to determine the value of the information until it had an opportunity to examine it. The Court said in this regard:

> "Only full disclosure of [petitioner's] wage structure based on the point values assigned to each factor for all jobs would enable the Union to know whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are present in the wage structure which, though impossible to visualize beforehand, appear to merit discussion once the full picture is available." (Appendix, *infra*, p. 28.)

Because the Company had supplied the information requested in situations where grievances had arisen over an alleged inequity in a particular wage rate, the Court reasoned that the information must be equally relevant for the establishment of broad pay formulas during collective bargaining.[2]

In a dissenting opinion, Judge Finnegan stated that the evidence made it clear that the Company had supplied the Union with substantial information and that that information was sufficient to enable it to make its own wage rate analysis. He said that in view of the Company's will-

2. This assumption of a relationship between the information requested and issues that might arise in collective bargaining is an adoption of the Board's assumption because there is no evidence whatsoever in the record concerning any such issue.

ingness to supply a substantial amount of information, it was possible to appraise the petitioner's attitude as one of good faith without forcing the production of the job rating substantiating data.

He pointed out that the point values assigned to a job by selecting one of five degrees under various evaluation factors was dependent upon the judgment of the evaluators and that these point values therefore represented managerial judgments or opinions rather than basic facts. For this reason he said he was unwilling to enforce the Board order because "it forces Taylor to undergo a test for determining the paternity and intellectual pedigree of its managerial judgments and opinions." (Appendix, *infra*, p. 31.)

REASONS FOR GRANTING THE WRIT.

The Company respectfully submits that the Court should grant the writ for the following reasons:

I. The Decision Below Is in Conflict With the Recent Decision of the Court of Appeals for the Ninth Circuit in NLRB v. F. W. Woolworth Company.

The decision of the Court below is based upon the proposition that an employer commits an unfair labor practice *per se* if he refuses a request for information made by a union representative and that no prior showing of need or relevancy is necessary because only after the union has an opportunity to examine the information can it determine to what extent the information would be helpful to its bargaining position. Only after the delivery of the information would the union be able to determine, the court said

> "* * * whether to press or modify a particular wage demand, whether inequities exist which merit discussion or correction, and whether other elements are

present in the wage structure which, although impossible to visualize beforehand, appear to merit discussion once the full picture is available." (Appendix, *infra*, p. 28.)

The conflicting view is taken by the Court of Appeals for the Ninth Circuit in *NLRB* v. *F. W. Woolworth Co.*, 235 F. 2d 319 (June 25, 1956). That opinion is premised upon the view that before a company can be found guilty of bargaining in bad faith for refusing to deliver information, the union must make some showing concerning its need or relevancy The Court held that no relevancy between the information requested and any issues in collective bargaining could be shown in that case because the request for information came after the general wage issue had been settled. In so doing, the Court rejected the view that an employer could be found guilty of bargaining in bad faith if it refused to give to a union information which, upon examination, might produce a basis upon which to predicate a future bargaining demand upon the employer. In direct contrast to the Court in the decision below, the Court in the *Woolworth* case, *supra*, stated:

"We do not hold that a request must painfully, laboriously or absolutely demonstrate in detail a relevancy, but we do believe that at some time or some place some specific relevancy should be asserted or facts should be shown whereby one could say that the employer ought to know anyway without demonstration of the relevancy of the information to the relationship of the parties. It must be something more than Micawber's 'something may turn up'." (235 F. 2d 319, 322.)

* * * * *

"Our appraisal of this record is that the claim of unfair practice, when closely analyzed, condenses to no more than, 'Well, we might find something'. If we are correct in that analysis of the nature of the claim, then we are confident of our conclusion that there was no unfair labor practice." (235 F. 2d 319, 323.)

* * * * *

"We do hold that the information does not have to be produced on a 'Well, we want it' or 'It is a handy thing to have around' basis." (235 F. 2d 319, 323.)

Chairman Farmer and Member Rogers in their dissent from the Board's decision in the instant case pointed up this important difference between the decision below and the holding in the *Woolworth* case, when they said:

"* * * We see nothing in the statute which imposes upon an employer the obligation to reveal, upon blanket request and with no pretense of any showing of need or relevancy, such remote 'information' or 'facts' as are involved in this case." (R. 186.)

There is no evidence that any representative of the Union even made the claim that the subconclusions of the Company's job analyst—that is, the points assigned under each of the eleven factors—was essential if the Union was to be able to bargain properly with the employer. Nor does the evidence show that there were any intra-plant wage rate inequity disputes then existing between the Company and the union.

The union's "blanket demand" for the subconclusions of the job analyst was entirely unsupported by any showing of need or relevancy. The request was made, just as the Ninth Circuit explained Micawber made his request, in the hope that "something may turn up" and that "Well, we want it or 'it is a handy thing to have around'."[3]

3. Mr. Justice Holmes likewise stated in *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298, p. 306:

"It is contrary to the first principles of justice to allow a search through all the respondent's records, relevant or irrelevant, in the hope that something will turn up."

II. The Decision Below Is Inconsistent With the Decision of This Court in NLRB v. Truitt Manufacturing Company.

In the *Truitt* case (351 U. S. 149, 76 S. Ct. 753 (1956)), the company asserted that it was unable to grant a wage increase because of inability to pay. This Court affirmed a Labor Board finding that the Company had bargained in bad faith when it refused to give the union some information to establish the honesty of its assertion of inability to pay.

However, this Court did not say that there was any obligation to deliver financial information to a union upon the union's mere request. The entire theory of this Court's decision in that case was predicated upon the refusal of the company to give any information *after* predicating a denial of a union demand upon an assertion of lack of ability to pay, an assertion based on facts exclusively within its knowledge.

In the instant case, there is no evidence, nor does the Board claim, that the Company refused to grant a wage adjustment in a particular wage rate based upon its assertion that the subconclusions—*i. e.*, the individual factor point scores—would not justify the requested increase. The Company had given the union the total point scores. However, assuming it had not done so and that it had denied a union claim for an inequity wage adjustment on the basis that the point score for the job would not justify such change, all that the doctrine of the *Truitt* case would have required the employer to do would have been to give to the union the *total points* assigned by its analysts to the particular job, because this Court said that the obligation of good faith bargaining is discharged if some information is given the union to show the honesty of its asserted position. Therefore, even if there was evidence that an in-

equity dispute existed (and there is none), the Company would have completely discharged its obligation when it gave the union the total point scores assigned each job by the job analyst. Furthermore, the evidence clearly shows that if a dispute over a wage inequity had existed, the Company would have given the subconclusions of its analyst—as it had done in connection with 95 jobs where inequity disputes had arisen (R. 9-13, 135, 150-152).

Let us illustrate the inconsistency between the reasoning of the Court below and that of this Court by another example. If a company gives to its union a copy of its profit and loss and balance sheets as a courtesy even though it *had not* rejected a wage demand because of inability to pay, would that company be guilty of violating the law *per se* if it refused to give a further breakdown analysis of its profit and loss and balance sheet? The doctrine expressed by this Court in the *Truitt* case would make it clear under such circumstances that that company would not be guilty of violating the good faith bargaining requirement. The holding of the court below extended to the above assumed set of facts would suggest such a result—a result clearly in conflict with this Court's decision in the *Truitt* case.

III. This Case Involves a De Novo Situation as It Requires the Delivery of Analytical Conclusions Rather Than Facts.

The Court of Appeals in the case below stated that:

> "We assume that the law does not impose * * * [the requirement that an employer make a job evaluation study], for itself, but when it does so, and its process produces a result upon which its wage structure depends, we are not able to discern any good reason why the union is not entitled to such information in the course of its bargaining negotiations." (Appendix, *infra*, p. 27.)

In making this statement, the Court below recognized the unique character of the information the Union was requesting in this case—a fact which distinguishes this case from the numerous other cases which have required the delivery of certain information to unions.

Board Chairman Farmer and Member Rogers also noted the difference between the information the Union is requesting in this case and the typical factual information which has been considered in other cases. They said:

> "Indeed, it is not even clear that the subject of the Union's demand is 'wage information.' The point designations which the Respondent assigns to the 11 individual job factors represent the Respondent's considered judgment based upon its introspective mental processes. In this instance, the Respondent reduced to writing the finer points of its thinking about the relative difficulty of the jobs in its plant, the comparative skill, experience, training, and other traits the jobs require. Another employer keeps these elements in his mental processes in the abstract and does not reduce them to writing." (R. 185.)

These two members of the Board pointed out the absurdity of a logical extension of the ruling of the majority when they said:

> "If the more methodical employer must expose the details of his inner thoughts at the bargaining table for others critically to appraise, logically, a less systematic one might be compelled to codify his thoughts in writing for the benefit of his employees' bargaining representative. A union's right to such information, if it is such a right and if information it is, can hardly depend upon the form in which an employer keeps it." (R. 185.)

The following table shows that the other cases decided by Courts of Appeals were not dealing with the results of analytical studies:

Court Decision	Information Required Upon Union Request
Boston Herald-Traveler Corp. v. *N. L. R. B.*, 223 F. 2d 58 (C. A. 1, 1955).	The names of the employees and their salaries.
N. L. R. B. v. *Whitin Machine Works*, 217 F. 2d 593 (C. A. 4, 1954), cert. den. 349 U. S. 905, 75 S. Ct. 583 (April 11, 1955).	The job classification, names and the rates of pay for each classification; the names of the employees and their seniority dates.
N. L. R. B. v. *Item Co.*, 220 F. 2d 956 (C. A. 5, 1955), cert. den. 350 U. S. 836, 76 S. Ct. 73 (Oct. 10, 1955).	The names of employees, the merit increases they had received and the dates of such increases.
N. L. R. B. v. *New Britain Machine Co.*, 210 F. 2d 61 (C. A. 2, 1954).	The names of the job classifications, the rates of pay for each classification and the names of the employees and seniority dates.
N. L. R. B. v. *Hekman Furniture Co.*, 207 F. 2d 561 (C. A. 6, 1953).	Employee names, their wage rates, and their classifications of work.
N. L. R. B. v. *Leland-Gifford Co.*, 200 F. 2d 620 (C. A. 1, 1952).	Names of employees and their classifications and the maximum and minimum rates of each classification.
N. L. R. B. v. *Yawman & Erbe Mfg. Co.*, 187 F. 2d 947 (C. A. 2, 1951).	Names of employees and the salaries of each employee.
Aluminum Ore Co. v. *N. L. R. B.*, 131 F. 2d 485 (C. A. 7, 1942).	Names of employees and their rates of pay.
N. L. R. B. v. *J. H. Allison Co.*, 165 F. 2d 766 (C. A. 6, 1948).	Names of employees and their wage rates and merit increases and amounts thereof.
N. L. R. B. v. *Itasca Cotton Mfg. Co.*, 179 F. 2d 504 (C. A. 5, 1950).	Names of job classifications and the hourly rate of pay of such classifications, average hourly earnings in each department and piece rates being paid.
N. L. R. B. v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2, 1953).	Information concerning disputed incentive rates.

Even where employers refused to substantiate an assertion of inability to pay in *NLRB* v. *Truitt Manufacturing Co.*, 351 U. S. 149, 76 S. Ct. 753 (1956) and *NLRB* v. *Jacobs Manufacturing Company*, 196 F. 2d 680 (C. A. 2, 1952), they were required to produce only factual information.

Thus it is now clear that in every employer-employee relationship, there are certain basic facts which are needed in connection with collective bargaining, such as the wage rates the employer is actually paying, the classifications of work for which the wage rates are paid, the number of employees in each classification, etc. It is self-evident that the union needs these basic facts. It should be able to make its own analysis of them. It might desire to compare the wage rates the particular company pays with those paid by other companies in the area or in the industry, etc. The course of action it selects might well depend upon such wage comparisons or other analytical studies.

If the decision of the Court below is based on a correct view of the law, the employer should be entitled to wage comparison surveys, or any other analytical studies made by the union. Possibly by searching through such union information, the employer could find material to more effectively defend against a union demand. The Court below concedes that the employer has the right to demand and search analytical data prepared by the union. It said:

> "We see no reason why either party to the bargaining process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole." (Appendix, *infra*, p. 28.)

The holding that analytical data concerning wages, be it a job evaluation analysis of intra plant wage rate

relationships or inter-plant wage rate comparison study must be supplied by one party to the other, is a *de novo* ruling in this area of information exchange. It is submitted that the Court below has gone too far.

If companies become obligated to turn over the results of a job evaluation analysis which they prepare to a union, they would not dare make such an analysis. Job evaluation analyses, when first made, inevitably indicate that intra-plant wage rate inequities exist. If the employer, by making this analysis, becomes obligated to supply to the union proof that such inequities exist, he will not make one.

The job evaluation type of analysis is management procedure. Its use, as well as the use of other similar analytical procedures such as inter-plant wage rate comparisons, would be retarded if the analytical conclusions resulting from such studies, must, as a matter of law, be turned over to the bargaining adversary.

CONCLUSION.

This Court, in *N.L.R.B.* v. *Truitt Manufacturing Company*, 351 U. S. 149, 76 S. Ct. 753 (1956) said:

> "Each case must turn upon its particular facts. The inquiry must always be whether or not under the circumstances of the particular case, the statutory obligation to bargain in good faith has been met." (76 S. Ct. at p. 756.)

The facts involved in this case show that the employer furnished a great deal of information to the Union upon the Union's request—

a complete list of all employees, showing their wage rate and job classification;

the wage rate for each job;

a job description for each job;

the National Metal Trades Association Job Procedure Booklet;

the total points assigned to each job by the job analyst applying the procedure; and

the table used in converting the total points to monetary amounts;

as well as other information.

The Union demonstrated no need for the subconclusions of the Company's job analyst. Nor is there any evidence in the record that any issue concerning wage rate inequities was involved in the collective bargaining between the parties.

Job evaluation information could only become pertinent when the company denies a claimed inequity adjustment on the basis of the study. When such issues have arisen between the Company and the Union, and the Company has resisted the requested change, the Company has *always* supplied to the Union the subconclusions of its job analyst under each of the eleven factors.

Only the blanket request of the Union attorney unrelated to any inequity issue was denied. It was denied because of the fear that if the information was supplied, the Union representatives would have searched for judgment discrepancies on the part of the job analyst in connection with his subconclusions and this "picking apart" would thereby increase, rather than decrease, the issues between the parties.

If each case must turn upon its particular facts, as this Court has clearly stated, no finding of bad faith can be supported upon the facts in this case.

Furthermore, the information requested is of an analytical nature. The law should not force the disclosure of the fruits of one party's analytical efforts to the other party of the bargaining process.

Finally, this Court should resolve the inconsistency between the decision below and the decision of the Court of Appeals for the Ninth Circuit in *NLRB* v. *F. W. Woolworth*, 235 F. 2d 319 (1956), as well as the inconsistency between the decision below and the basic rationale of this Court in *NLRB* v. *Truitt Manufacturing Company*, 351 U. S. 149, 76 S. Ct. 753 (1956).

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

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